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HSBC

By electronic delivery

April 14, 2010

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1384

Dear Ms. Johnson:

This comment letter is submitted by HSBC Bank Nevada, National Association ("HSBC") in response to the proposed amendments to Regulation Z ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board") to implement the penalty fee and account review provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act"). HSBC appreciates the opportunity to provide its comments on the Proposed Rule.

HSBC is part of HSBC North America Holdings Inc., one of the ten largest bank holding companies in the United States. HSBC – North America comprises businesses with assets totaling $391 billion at December 31, 2009. The company's businesses serve customers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets.

In view of the August 22, 2010 effective date, HSBC urges the Board to issue a final rule as soon as possible. This Proposed Rule covers two complex and difficult provisions of the CARD Act, and we respectfully request that the Board consider HSBC's comments in the Board's final rulemaking process. HSBC offers the following comments in response to the Proposed Rule:

I. Reasonable and Proportional Penalty Fees

The CARD Act requires the Board to establish standards for assessing whether the amount of any penalty fee or charge is reasonable and proportional to the omission or violation to which the fee or charge relates. The CARD Act provided that the Board shall consider (1) the cost incurred by the creditor from such omission or violation; (2) the deterrence of such omission or violation by the cardholder; (3) the conduct of the cardholder; and (4) such other factors as the Board may deem necessary or appropriate.

HSBC respectfully requests that the Board use the considerable discretion it has been granted to provide rules which (a) minimize the unintended consequences of a reduction in late fees, including a further reduction in credit availability and a further shift of credit costs from demonstrably risky customers to those who merit favorable credit terms and (b) minimize the impact to credit card issuers who entered into credit agreements under prior regulations.

A. Costs Incurred Methodology

The Board has proposed that a card issuer may consider cost and collection expenses to determine late fee amounts. Notably, however, the Proposed Rule does not allow card issuers to consider the higher rates of loss that may be associated with particular violations of the account terms (such as the cost of holding reserves against losses). As set forth in more detail below, HSBC requests that the Board (1) more specifically describe the types of costs that may be considered in its determination, (2) allow consideration of some amount of credit losses and related costs, and (3) allow for consideration of assessed, but uncollected, penalty fees.

1. The Board should specify types of common costs that a card issuer may consider when using the cost methodology, to avoid ambiguity.

Under comment .52(b)(1)(i)-4(i) the Board would allow a card issuer to consider "the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements)."

HSBC believes this guidance should specifically permit consideration of costs commonly associated with delinquent accounts. These include:

- Collections and hardships servicing costs -- for contacting and servicing delinquent customers (e.g., calls, letters, skip trace, special payment plans, consumer counseling, etc), as well as costs incurred by agencies to collect on the bank's behalf
- Systems costs -- for updating and maintaining the systems used to support collections activities (user interface software, reporting tools, A/R system)

- Indirect expenses which support collections and hardship programs -- resources which optimize and track collections and delinquent account management strategies, provide management oversight of collections and hardship accounts activities and teams, and provide support to the servicing functions
- Cost of funding delinquent receivables between delinquency and write-off, for accounts that are eventually charged off and non-recoverable

While it may be feasible for a final rule to specify what HSBC believes are common industry costs identified above, it is not feasible to itemize all possible costs individual card issuers might incur as a result of late payments. For that reason, the final rule should not provide an exclusive list of cost types, but should allow for reasonable institutional discretion as to consideration of other costs meeting the Board's description.

2. The final rule should allow card issuers to include some amount of credit loss and related expense in the cost methodology.

Citing an Argus Information & Advisory Services, LLC, study presented to the Board during prior rulemaking, the Proposed Rule provided that "although higher rates of loss may be associated with particular violations, those losses and related costs (such as the cost of holding reserves against losses) are excluded from the cost analysis." While HSBC did not participate in the study referenced by the Board, HSBC believes that there is a strong correlation between delinquency and credit losses. In any event, HSBC notes that even if the Board interprets the prior Argus study as articulated in the Proposed Rule, 7% of credit losses under the Board's conclusion were attributable to the referenced account defaults.

HSBC notes that while this number may seem immaterial as a mere percentage, it certainly is material if a card issuer's overall account default percentage is 3%, as it represents a 230% increase in defaults for the class described by the Board. Taken one step further, assuming that card issuer's 3% overall default percentage represents a blend of 1.5% defaults for conforming accounts, and 7% defaults for non-conforming accounts, the 7% figure represents a 467% increase in default for the class described by the Board in relation to conforming accounts. While HSBC agrees that recovery of all credit losses through assessment of penalty fees would have illogical and unfeasible consequences, HSBC nevertheless submits that some amount of credit losses and related expenses should reasonably be considered when a card issuer is determining fee amounts using the cost methodology.

3. The final rule should allow a card issuer to consider the cost of rightfully assessed, but uncollected, penalty fees in the cost methodology.

Should issuers follow the Board's example in Staff Comment .52(b)(1)(i)-4(ii)(A), they would not be able to fully recoup the costs associated with delinquent customers. Under the provided example, if a card issuer determined that 1 million delinquencies resulted in $23 million in costs, it would only recover the $23 million in costs if each and every delinquent cardholder actually paid the assessed $23 penalty fee. In fact, a significant amount of penalty fees assessed are never collected. For example, the outstanding balance, which includes assessed late fees, may charge off. Additionally, late fees may be waived under a hardship or Servicemembers Civil Relief Act program, or simply as a customer courtesy. In the above example, if an issuer assessed a $23 late fee, they may only recoup $500,000 to $700,000 in costs. HSBC urges the Board to allow use of a cost methodology formula based on *collected* fees.

Allowing use of such a formula would ensure that determined penalty-related costs are fully allocated to cardholders who exhibit penalty conduct, and would avoid having the cost of uncollected penalty fees being allocated to cardholders who do not demonstrate risky behavior, for example, through increased APRs or annual fees.

B. Deterrence

The Board has proposed that a card issuer may assess penalty fees, which are reasonably necessary to deter penalty occurrences using an empirically derived, demonstrably and statistically sound ("EDDSS") model that is based on its own cardholder behavior. The Board acknowledged that card issuers may not have such a model developed as of the Effective Date, and seemingly will allow card issuers to conduct consumer testing.

HSBC believes the methodology needed to create and validate models under the Proposed Rule has seemingly unachievable objectives. If these deficiencies can be corrected, HSBC anticipates significant amounts of testing would be needed so as to ensure that all cardholders are deterred from account violations. HSBC also submits there should be other, more efficient, methods for determining reliable deterrent penalty fee amounts.

1. The creation of an empirically derived, demonstrably and statistically sound deterrence model which meets all Board requirements is unfeasible.

HSBC does not currently possess an EDDSS model of the type described by the Board, nor does it have the required test and control data that would enable it to develop a model without significant testing of the deterrent effect of various pricing variations. To develop such a model, there are several significant challenges. We request that the Board give consideration to these challenges in its final rulemaking.

The first challenge has to do with finding customers willing to be part of the test. We believe it will be difficult if not impossible to maintain test populations of sufficient size to meet the Board's rigorous requirements. To test the deterrent effect of different levels of late fees, certain customer populations will need to receive late fees that are higher than the majority control group. These test populations will likely experience high levels of attrition due to the fact that their fees will not be market-competitive. Should issuers be required to disclose to cardholders that they are part of the test population or should consumers become widely aware of the use of test populations, attrition rates will be even greater. Given the need to maintain test populations over time in order to perform annual reevaluations of prior modeled determinations, issuers would need to originate large populations of accounts at test fee levels or continually transfer existing cardholders into the test population via changes in terms. If the latter, this would require adherence to timing and right of rejection requirements under §226.(9)(c). HSBC estimates that test populations may require testing of large volumes of cardholders, but the amount would depend on the final rules, test's design, and the default rate of the test population.

The second challenge is model validation which meets the Board's stated standard. While the Board's Proposed Rule uses understandable and simple examples of testing, the actual requirements of the Proposed Rule and staff Commentary suggest far greater complexity. In Staff Comment .52(b)(1)(ii)-2, the Board provides that "in order to support a determination that the dollar amount of a fee is reasonably necessary to deter a particular type of violation, a model must reasonably estimate that, independent of other variables, the imposition of a lower fee amount would result in a substantial increase in the frequency of that type of violation." So as not to further increase the quantity of the test populations, we request that the Board clarify that issuers do not need to test all possible lower fee amounts but rather they could meet the standard by testing fees that differ by a reasonable (e.g., $5) increment.

2. Assuming the above challenges can be overcome, HSBC requests that the Board allow for different fees by portfolio and to allow for the ability to test fees that could exceed the cost methodology and safe harbor.

Since we underwrite many different segments of consumers, HSBC requests the flexibility to test deterrence for differing credit card portfolios (e.g. non-prime, prime, retail credit, general purpose credit) and for the ability to use a different fee amount by portfolio if different portfolios lead to differing EDDSS model results.

Additionally, we believe it would take 12-18 months for data to produce initial EDDSS results, which will require specific regulatory protection. We believe that the Board must specify within the final rule that a card issuer is permitted to assess fees that may exceed its cost methodology determination or safe harbor amounts while the tests are being conducted.

3. A card issuer should be allowed to use quantitative consumer research to establish deterrence, including surveys of its cardholders.

Credit card product design frequently makes use of quantitative consumer research to determine rates, fees, loyalty program offerings, and other product attributes. This research often leverages sophisticated techniques to assess consumer preference. If card issuers can provide statistically significant quantitative research that shows consumers would find a level of late fee to be an effective deterrent, such research should suffice to support a card issuer's penalty fee amounts.

C. Conduct of the Cardholder

1. Any "single event or transaction" limitations should be more logically based, and must provide more specific guidance as to application.

Section 226.52(b)(2)(ii) of the Proposed Rule would restrict a card issuer from imposing multiple fees based upon the same event or transaction. For example, if a cardholder remits an NSF payment, and the reversed payment results in account delinquency, the imposition of both a late and NSF fee would violate the rule. However, Staff Comment .52(b)(2)(ii)-1(2)(B) goes quite a bit further and provides that even when a payment is received after a due date, a resulting NSF occurrence is considered the 'same event or transaction' as the bygone delinquency occurrence. Further, the staff comment does not specify when the relationship between two seemingly unrelated violations ends.

As an initial point, HSBC believes these are two separate violations, and that a card issuer should be allowed to apply a fee related to each account violation. HSBC believes that attempts to determine relationships between different violation types is open to limitless interpretation. For example, consider a scenario where a $25 payment is due April 14, and no payment is received. The following cycle, a $50 minimum payment is required by May 14. The cardholder remits a $40 check on May 1 which is returned NSF, and subsequently fails to remit the May 14 payment. It is unclear to HSBC why the NSF check would be the same event or transaction as the April 1 delinquency, which would have occurred regardless of the returned check. It is also unclear why the $40 NSF payment should be deemed the same event or transaction as the May 14 delinquency, as the cardholder would have been delinquent whether or not the May 1 payment returned.

While HSBC appreciates the Board's rationale in limiting multiple fees based on related violations, and indeed took proactive action to reduce so-called "fee stacking" ahead of federal guidelines, HSBC believes the complexity of determining a 'same event or transaction' scenario under proposed commentary would compel a card issuer to utilize the one fee per billing cycle safe harbor. Consequently, the card issuer would be obligated to waive fees in many circumstances where multiple account violations in a given month were wholly unrelated.

HSBC requests that the Board give strong reconsideration to the Proposed Rule's suggested approach as to 'same event or transaction' limitations. If the Board determines there is a connection between violations, the Board should be far more detailed in staff commentary examples as to the specific factors that caused the violations to be related, including any timing proximity considerations and/or limits that might alter the determination. Given the limitless examples of an NSF payment having no logical correlation to a late payment occurrence, the final rule should provide well-defined circumstances where multiple violations are deemed a same event or transaction. Only with detailed guidance could a card issuer reasonably build systems capable of detecting those scenarios. A card issuer should be reasonably capable of complying with the general rule, and not compelled to use a safe harbor due to ambiguity and complexity.

2. The Board's proposed late fee limitation should be simplified, and not require case-by-case recalculation.

Proposed Staff Comment .52(b)(2)(i)-1 provides that regardless of fee methodology used, "the dollar amount associated with a late payment is the amount of the required minimum periodic payment that was not received on or before the payment due date." As the wording of this comment deviates from that used in Staff Comment .52(b)(2)(i)-2,[1] HSBC interprets that the Proposed Rule would require a card issuer to consider only the *unpaid amount* of the required minimum due. For example, if a required minimum due was $25, and the consumer remitted $23, the fee amount would be limited to $2.

While HSBC has not researched the frequency of cardholders remitting a payment of nominal amount less than the required due, we question whether this happens with sufficient frequency to require unique protections. Offsetting the consumer protection benefit of such an approach, a requirement to determine individualized late fee for each transaction would require very significant

[1] "Comment .52(b)(2)(i)-2 provides that the dollar amount associated with a returned payment is *the amount of the required minimum periodic payment due* during the billing cycle in which the payment is returned to the card issuer." [Emphasis added]

investments of time and cost to develop appropriate technology. We also believe such a complex framework would be far more susceptible to inadvertent error. HSBC believes that it would be reasonable for a late fee to be limited to the amount due during that billing period, and requests that the Board simplify the final rule using wording that mirrors the language used in Comment .52(b)(2)(i)-2.

D. Other Factors the Board Should Deem Necessary and Appropriate

The Board has been given significant discretion to consider any "such other factors as the Board may deem necessary or appropriate"[2] in issuing rules that ensure reasonableness and proportionality of penalty fees. HSBC urges the Board to use that broad discretion, in considering the following:

1. A reduction in late fees will lead to further credit contraction, higher pricing for good customers, or both.

As they have with other reductions to revenue, issuers will react to a cut in late fees by increasing revenue from other sources (e.g., APR or annual fees) or by cutting back on the supply of credit.

An analysis of our portfolios finds that, should late fees be capped at $25, APRs would need to increase by up to 300 bps (e.g., from 22% to 25%) depending on the portfolio. Alternatively, should we not raise APRs, the number of customers being approved for credit cards would decrease by 7% to 30% depending on the portfolio. Under a severe scenario in which late fees are reduced to $20, APRs would need to increase by up to 600 bps (e.g., from 22% to 28%) or the number of customers approved for credit reduced by 8% to 50%, depending on the portfolio. These effects will be felt across the economy and will primarily impact "good" borrowers, from small businesses and consumers needing to finance purchases to retailers needing to grow sales. For example, the average merchant with a private label credit program could expect a sales decrease of 2-4% under a $20 late fee scenario. With the success of the economic recovery dependent on credit, we would encourage the Board to consider the downstream effects of reduction in late fees.

2. The financial impact with respect to existing credit card accounts will be significant, because a card issuer is greatly restricted from shifting recovery of credit losses from current fees to other account pricing.

The supplementary information notes "the Board understands that, as a general matter, card issuers currently do not price for the risk of loss through penalty

[2] CARD Act §102 Limits on Fees and Interest Charges: *(c) CONSIDERATIONS.-In issuing rules required by this section, the Board shall consider- (4) such other factors as the Board may deem necessary or appropriate.*

fees; instead, issuers generally price for risk through upfront annual percentage rates and penalty rate increases." The Board goes on to express concern that "if card issuers were permitted to begin recovering losses and associated costs through penalty fees rather than upfront rates— transparency in credit card pricing would be reduced."

HSBC respectfully disagrees with the Board's assumption that card issuers currently price for the risk of loss through APRs alone. To the contrary, a 2006 GAO report[3] on credit card practices concluded that:

> "[t]he average credit card rates reported by the Federal Reserve were generally around 18 percent between 1972 and 1990. According to the survey of credit card plans, conducted every 6 months by the Federal Reserve, more than 100 card issuers indicated that these issuers charged interest rates between 12 and 15 percent on average from 2001 to 2005. For the 28 popular cards we reviewed, the average interest rate that would be assessed for purchases was 12.3 percent in 2005, almost 6 percentage points lower than the average rates that prevailed until about 1990."

These GAO report findings illustrate a change in practices by card issuers. Over the years, card issuers have transitioned to a business model where the cost of credit losses is recovered through assessment of penalties only to those cardholders who violate terms of the credit account, rather than imposing a higher cost of credit to all cardholders through increased APRs.

While HSBC understands the Board's objective to reflect the cost of credit losses in a more transparent APR, HSBC submits that a card issuer is significantly restricted from transferring credit loss recovery from fees to a more transparent APR with respect to existing credit card accounts. Such a concept may be feasible in connection with newly originated credit card accounts, for example, through offering an increased APR to new applicants. However, final rules must consider that recent Board rulemaking under § 226.55 that prohibits the increasing of account APRs as to existing balances unless one of the very limited exceptions applies. Therefore, a card issuer will be significantly hampered from shifting the cost of credit losses from penalty fee recoveries to a more transparent APR with respect to existing accounts.

Given the broad discretion granted to the Board under the CARD Act, HSBC requests that the Board take into account the capital loss that HSBC and other issuers will incur as a result of any immediate and significant reduction in penalty fees, with significant limitations to recoup anticipated losses. HSBC further requests that the FRB consider a "phase in" period whereby issuers would be permitted to gradually reduce late fees for credit balances incurred prior to

[3] GAO-06-929 Credit Cards, pages 15-16.

August 22, 2010. Such a phased approach would move more safely toward a product construct which reflects cost of credit losses within account APRs, while ensuring that card issuers are repaid in accordance with the terms under which the original loans were made. This would reduce the capital loss associated with the new late fee regulation, and would mitigate potential safety and soundness issues that could arise through regulations that are giving immediate effectiveness.

3. The ability to provide benefits or rebates to cardholders for good conduct should not be impeded by the final rule.

A card issuer should be allowed to offer account benefits and interest rebates to encourage certain behaviors, such as the remittance of timely payments. HSBC is concerned that the final rules could be construed to restrict the ability of a card issuer to reward good cardholder behavior if it does not offer the same or similar benefit to a cardholder who does not exhibit such behavior, as an effective penalty fee.

While the Proposed Rule seems focused on specific common fee types, the wording of Section 226.52(b)(1) and the accompanying commentary fee 'examples' create significant ambiguity. Taken to an extreme, the forfeiture of reward points or assessment of deferred interest upon violation of program terms could be construed as a penalty fee. HSBC suggests that, to avoid ambiguity, Section 226.52(b)(1) and related Staff Comment 226.52(b)(1)(i)(A)-(C) be modified to make specific reference to fees contemplated in 226.6(b)(9), 226.6(b)(10) and 226.6(b)(12) as appropriate. Alternatively, HSBC requests staff clarification or commentary that Section 226.52(b)(1) applies only to fees actually imposed following an account violation, and does not encompass deprivation of an account benefit or interest rebate. There is no indication that the CARD Act intended to restrict the providing of account benefits and interest rebates to consumers in any way.

4. A card issuer should have discretion to utilize more than one methodology.

In order to build and validate an empirically derived and statistically sound deterrence model, card issuers will have to test the deterrence method. During the testing period, some cardholders may be assessed penalty fees under a deterrence methodology, while others may be assessed penalty fees under a different methodology (e.g. a safe harbor method). The Proposed Rule did not limit a card issuer's discretion to apply more than one methodology to its credit card programs at the same time. However, HSBC notes that it will need significant flexibility to test and determine which methodologies to utilize, and therefore requests that the final rules do not inhibit a card issuer's discretion on use of the acceptable methodologies.

5. The final rule should allow significant flexibility in coordinating systems programming and disclosure changes.

HSBC requests the flexibility to make systemic changes for the August rules prior to the August effective date. Typically, HSBC prefers to load systemic changes supporting regulatory initiatives prior to the effective date to ensure any unforeseen issues are properly surfaced and addressed. Further, there are significant systemic and operational burdens with loading systemic changes in sync with the August 2010 effective date as HSBC systems processing is greatly reduced over the weekend. Also, the final rule should consider that all disclosure documents, including those used in ongoing direct mail and retail point of sale offers, will need to be revised to meet new disclosure requirements.

E. Safe Harbor

The CARD Act authorized the Board to establish a safe harbor amount for reasonable and proportionate penalty fees. Such a safe harbor should consider (1) the cost incurred by the creditor from such omission or violation; (2) the deterrence of such omission or violation by the cardholder; (3) the conduct of the cardholder; and (4) such other factors as the Board may deem necessary or appropriate. HSBC urges the Board to provide for meaningful and useful safe harbor dollar amounts that reasonably allow for recovery of collection costs, and sufficient to deter account violations.

Based on our own analysis and that provided in a comment letter that is being submitted by Morrison Foerster (the "Data Study"), HSBC believes the Board should set the Safe Harbor at $30. We believe this level of late fee is sufficient to allow recovery of collections costs, excluding credit costs. As for deterrence, HSBC has reviewed the analysis submitted as part of the Issuer Response and concurs that higher late fee levels effectively deter consumer delinquency and that, for most cardholders, $28 is the minimum amount needed to achieve significant deterrence with cardholders themselves suggesting the figure needs to be higher, per the survey results included in the Issuer Response.

As the card industry appears to assess an average penalty fee of $39, establishing a safe harbor in the $30 range would represent a significant reduction in current fee amounts. Further, a $30 safe harbor amount would mitigate the loss of assumed revenues that were considered by credit card pricing models, and relied upon by issuers to recoup anticipated losses Finally, to the extent certain issuers experience higher costs than a $30 safe harbor, this amount would encourage cost efficiencies, given the benefits of utilizing a safe harbor as opposed to calculating and defending higher cost determinations.

Further, HSBC believes significant customer confusion will result from employment of, and changing from, other penalty fee methodologies. HSBC anticipates fee amounts will fluctuate during ongoing alternate methodology reassessments required under § 226.52(b)(1)(iii) Movement from one methodology to another would occur, for example, if modeling showed use of the amount justifiable under the cost methodology failed to deter penalty occurrences. Also, if changes cause an increase in fee amount, card issuers will presumably be forced to expend additional time and effort providing notice of changes. Consequently, a card issuer will also then administer change in terms rejections, and be forced to honor application of fee amounts which were based upon outdated cost determinations and/or modeling.

F. HSBC proposes Board consideration of a tiered methodology, to ensure that the amount of a penalty fee reflects increased risks associated with repeated violations.

It is HSBC's belief that repeated delinquency occurrences is highly predictive of future charge off, and that predictability supports a higher late fee assessment for repeat violations of account terms.

HSBC proposes that the Board consider a tiered penalty fee construct which allows the assessment of increased penalty fees to cardholders who repeatedly pay late. Such a tiered concept should be mindful of card issuer costs and deterrence, which may result in infrequent violators of account terms paying, slightly less than the amount, but would be counterbalanced by frequent violators of account terms paying more than may be needed to recover collection costs and/or deter. Such a construct would have two key benefits. First, it might minimize the impact on cardholders who remit an isolated late payment, but otherwise pay on time. Second, HSBC believes it might be inferred that the amount of a penalty was insufficient to deter an initial penalty occurrence, and an increased fee for repeat violations could increase deterrence if standard deterrence assumptions were ineffective.

II. Reevaluation of Rate Increases

A. In General

HSBC believes that the Proposed Rule provisions for the reevaluation of rate increases are generally reasonable considering the requirements of the CARD Act. The Proposed Rule provides that if a card issuer increases the APR on an account based on any "factors", including the credit risk of the cardholder, market conditions or any other factors, the card issuer must review the account, once every six months, and reduce the APR when a reduction is indicated by the review.

B. The Board should retain the provisions in the Proposed Rule that (i) limit the reevaluation requirement to rate increases that would trigger a change in terms or penalty notice; and (ii) allow card issuers to either consider the factors that led to the repricing or the card issuer's current factors when reviewing an account for a possible APR reduction.

The Proposed Rule limits the reevaluation requirement to rate increases that would trigger a change in terms or penalty notice, and HSBC urges the Board to retain this limitation in the final rules. It would not be logical to evaluate an account for an APR reduction if the APR increase is the result of the expiration of a promotional rate or a workout program.

The ability of a card issuer to review the factors it currently considers in determining whether to reduce the APR on an account is very important to HSBC. Given the number of card programs issued by HSBC, it would be difficult to isolate a specific factor for a specified period of time. Over time, such factors can become outdated and no longer meaningful for purposes of account review. We, therefore, urge the Board to retain the provision in the Proposed Rule that allows a card issuer to either consider the factors that led to the repricing or the card issuer's current factors when reviewing an account for possible APR reduction.

With respect to multiple product lines, the Proposed Rule acknowledges that a card issuer may review different factors in determining the APR that applies to private label cards than the factors reviewed in determining the APR that applies to general purpose credit cards. This is a relevant distinction, however, the Proposed Rule also states that a card issuer must review the same factors for accounts with similar features that are offered for similar purposes, and may not consider different factors for each of its individual accounts. We ask the Board to delete this provision in the Proposed Rule. HSBC offers many different varieties of private label credit card programs and general purpose credit card programs, and may review different factors with respect to each type of credit card program. In addition, a card issuer may, within a single credit card program, review different factors for new applicants than it reviews for existing accounts. We urge the Board to provide the appropriate clarification that takes into consideration the complexity of credit card programs offered by larger credit card issuers.

A card issuer may occasionally change the factors that it reviews in determining the APRs applicable to its accounts. The Proposed Rule clarifies that when a card issuer changes the factors that it uses in determining APRs, it may comply with Section 226.59(a) for a brief transition period by reviewing the set of factors it considered immediately prior to the change in factors, or may consider the new factors. The Board solicited comment on whether the final rule should establish a safe harbor for what constitutes a brief transition period following a change in factors, for example 30 days or 60 days. HSBC requests that the Board provide for a 60 day timeframe in order to give the card issuer adequate time to revise the written policy on factors and implement the new policy while continuing to conduct ongoing rate evaluations.

C. HSBC requests that the implementation timeframe for a repricing should be 60 days after the completion of the applicable factor review.

The Proposed Rule requires card issuers to reduce the APR no later than 30 days after the completion of the factor review. The Board requested comment regarding whether a different timing standard should apply. HSBC requests the Board to extend the timeframe to at least 60 days after the completion of the factor review. This additional time is necessary to account for the time it takes to process files that load the lower APRs into the system, and to conduct testing and auditing to verify that the correct lower APR is being applied to each account. In any event, we request that the Board permit card issuers to wait until the first day of the billing cycle after the expiration of the 60 day time period to reduce the APR because many card issuers, including HSBC, do not have the systemic functionality to support a mid-cycle change in APR.

D The requirement to conduct account reviews should expire after 2 years.

The Proposed Rule allows card issuers to cease the six month account review process if the card issuer reduces the APR to the APR applicable immediately prior to the increase or if the card issuer reduces the APR to an APR that is lower than the APR applicable immediately prior to the increase. HSBC believes that this approach is reasonable, and requests that the Board retain it. The Board requested comment on whether the obligation to review the account should terminate after a specific period of time. HSBC strongly urges the Board to impose a two year time limit on the requirement to conduct account reviews. We believe that if the account is not priced downward after two years, it is not likely to be further reduced, and that the two year approach balances the costs associated with the account reviews with the consumer benefit provided by the reviews.

E. We ask that the Board provide us with a reasonable transition timeline.

The Board requested comment on reasonable transition guidance for card issuers in conducting reviews for APR increases that occurred on or after January 1, 2009 and prior to August 22, 2010. The Proposed Rule provides that the first review for such APR increases must be conducted prior to February 22, 2011. HSBC requests clarification that any reductions based on such review are required to be made within 60 days after February 22, 2011. We also request that the Board permit card issuers to wait until the first day of the billing cycle after the expiration of the specific time period to reduce the APR due to the fact that many card issuers do not have the systemic functionality to support a mid-cycle change in APR.

Because the obligation to continue account evaluations applies to acquired accounts, it would be helpful to require all card issuers to retain appropriate records on accounts to which the reevaluation of rate increases is applicable.

III. Requested modifications to prior Board Rulemaking

1. The Board should modify the final rule to allow the reinstatement of all prior account terms at the conclusion of the hardship benefit period.

Within its final rule concerning CARD Act provisions effective February 22, the Board clarified that a card issuer may reinstate an account "fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)." In order to foster the successful completion of a hardship program, a card issuer may also suspend other account fees in addition to those referenced by the Board. For example, it is believed to be industry standard that assessment of late and overlimit fees is suspended in connection with a hardship program. However, as these fee types are required to be disclosed under § 226.6(b)(2)(viii) and (b)(2)(ix), there is no exception for their reinstatement at conclusion of a hardship program. As such, the reinstatement of standard late payment and over the limit fees would require delivery of a change in terms notice under §226.9(c), and require that the card issuer offer the cardholder the right to reject the change.

A card issuer's decision to suspend late and overlimit fees provides immediate and significant relief to cardholders in need, and greatly impacts a cardholder's ability to successfully meet hardship program requirements. A card issuer should not be discouraged from providing this significant relief due to onerous requirements regarding the reinstatement of those fees. A requirement to provide advance notice and rejection rights prior to reinstatement of any standard account fees to which the cardholder and card issuer previously agreed is an unwarranted consumer protection. Such a requirement could impact a card issuer's decision to suspend account fees which it is incapable of easily reinstating, which would negatively impact cardholders. HSBC requests that the Board clarify that a card issuer is allowed to reinstate any standard account fee or charge following completion of a hardship program, provided it has provided the cardholder with a clear and conspicuous written disclosure of the terms of the arrangement.

2. The Board must provide an exception for the reinstatement of prior account terms at the conclusion of benefits required under the Servicemembers Civil Relief Act (SCRA).

Within its final rule concerning CARD Act provisions effective February 22, the Board introduced a pricing increase exception related to termination of benefits under the SCRA. Specifically, the Board provided "If an annual percentage rate has been decreased pursuant to 50 U.S.C. app. 527, a card issuer may increase that annual percentage rate once 50 U.S.C. app. 527 no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate that exceeds the annual percentage rate that applied to those transactions prior to the decrease."

HSBC notes that the SCRA requires a card issuer not only to reduce account APRs during military assignment, but also to reduce "interest" imposed on the credit plan, which definition includes account-related fees.[4] In practice, a card issuer must suspend many account fees in order to ensure that it does not impose a rate of interest in excess of the stated maximum. HSBC currently suspends fees required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(xii), and other administrative fees. Additionally, a card issuer is required to reduce the minimum monthly payment during the SCRA benefit period,[5] and would expect an ability to reinstate prior minimum payment requirements at conclusion of the benefit period.

HSBC requests that the Board reconsider the exception which only allows reinstatement of APRs upon termination of SCRA benefits. Such a limited exception would require a card issuer to provide advance notice and the right to reject, prior to reinstating the many other account fees and minimum payment, which were required to be suspended or reduced pursuant to federal law. Certainly, a card issuer should be entitled to reinstate all standard account terms to which the customer previously agreed upon termination of benefits under SCRA.

Conclusion

HSBC appreciates the Board's ongoing efforts to provide final rules as far in advance of the effective date as is feasible. As the Board is aware, expedited development and testing of new requirements can create significant risk of error.

With respect to the Board's cost methodology proposals, HSBC respectfully requests that the Board more specifically describe the types of costs that may be considered in its determination, should allow consideration of some amount of credit losses and related costs, and should allow for consideration of assessed, but uncollected, penalty fees.

[4] Per the SCRA's definition, "The term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability."

[5] Section 207 of SCRA provides: "(3) Prevention of acceleration of principal.--The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made."

With respect to the Board's deterrence-based methodology proposals, HSBC believes some potentially unachievable requirements must be resolved for this methodology to have viability. Assuming those challenges can be resolved, HSBC requests ability to test among various cardholder populations, rather than determining a universal deterrent value. A card issuer must be specifically permitted to use needed test fee amounts for this modeling, without threat of exceeding determined costs and/or safe harbor amounts. Finally, HSBC also believes there should be less complicated ways for an issuer to establish deterrent effect, such as through quantitative consumer research.

In consideration of conduct of the cardholders, the final rule should attempt to set reasonable limitations which do not require case-by-case determination. If the Board believes specific scenarios which should be treated as a same event or transaction, such as an NSF fee directly and singularly causing a delinquency occurrence, such scenarios should be well-defined, and not require unreasonable effort to detect such scenarios. A card issuer should be capable of building its technology to comply with a general rule, and should not be compelled to use a safe harbor due to ambiguity and complexity.

HSBC believes that the Board use the considerable discretion it has been granted to provide rules which minimizes the unintended consequences of a final rule, including a further reduction in availability of consumer credit. Final rules should avoid a further shift of credit costs from behaviorally risky customers to those who merit favorable credit terms. Finally, discretion should be used to minimize the impact to U.S. credit card issuers who entered into credit agreements in reliance upon prior regulations.

Finally, HSBC appreciates the Board's reconsideration of prior rulemaking concerning reinstatement of prior account terms at the conclusion of a hardship and/or Servicemembers Civil Relief Act benefit period. HSBC believes this may have been an oversight in prior rulemaking, but would hope to be able to reinstate all modified account terms at the conclusion of program benefits, without unreasonable procedural requirements, or administration of a right to reject.

Please do not hesitate to contact James Hanley at (952) 564-7600 or Donna Radzik at (224) 544-2952 in connection with this comment letter.

Sincerely,

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